

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 65 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and  
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

RAJJAN @ RAMSWARUP DARSHAN

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Appearance:

Mr.K.P. Rawal, APP, for the appellant

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CORAM : MR.JUSTICE J.M.PANCHAL and  
MR.JUSTICE M.H.KADRI

Date of decision: 17/06/97

ORAL JUDGMENT: ( Panchal, J.)

By means of filing this appeal under Section 377 of the Code of Criminal Procedure, 1973, the State of Gujarat has prayed to enhance the sentence imposed on the respondent while convicting him under Sections 307 and 452 of the Indian Penal Code.

2. Shyamrathi Sathaludas is residing in house No.365, situated in Ravjinagar Vibhag No.1, Arbudanagar Road, Odhav, Ahmedabad. His elder son, Laxmikant, is

residing in a chawl owned by one Bhagwanbhai Rabari and he was working on the machine of Lalitbhai. On October 20, 1995, at about 2 a.m., two policemen came to the house of Shyamrathi and awoke him from sleep. Shyamrathi was informed by the policemen that his son Laxmikant was assaulted with knife and was admitted in the Shartaben Hospital for treatment. On receiving information, Shyamrathi went to the hospital together with the policemen and found that his son was admitted in the emergency ward and had sustained injury on his belly. On inquiry being made, Shyamrathi was informed by his son that the respondent had caused knife injury to him, as the respondent and one Ram Balli, who had consumed liquor, were scolded by him. On receiving information from his son, Shyamrathi lodged first information report with the police. On completion of investigation, the respondent was charge-sheeted under Sections 307 and 452 of the Indian Penal Code and Section 135(1) of the Bombay Police Act. As the offence under Section 307 of the Indian Penal Code is exclusively triable by the Court of Sessions, the case was committed to the Sessions Court for trial and numbered as Sessions Case No.43 of 1996. Charge was framed against the respondent under Sections 307 and 452 of the Indian Penal Code and Section 135(1) of the Bombay Police Act. Charge was read over and explained to the respondent, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined witnesses to prove its case against the respondent.

3. The learned Judge recorded further statement of the respondent under Section 313 of the Code of Criminal Procedure, 1973, after recording of evidence of prosecution witness was over.

4. On appreciation of the evidence led by the prosecution, the learned Additional Sessions Judge held that the prosecution proved that the injury sustained by the injured, Laxmikant, was caused by the respondent and that the respondent committed offences punishable under Sections 307 and 452 of the Indian Penal Code. After recording said finding, the learned Judge heard the prosecution and the accused on the question of sentence. The learned Judge, by judgment and order dated November 29, 1996, has directed the respondent to undergo rigorous imprisonment for three years and to pay fine of Rs.500/-, in default, rigorous imprisonment for fifteen days for the offence punishable under Section 307 of the Indian Penal Code. The learned Judge has also directed the respondent to undergo rigorous imprisonment for one month and to pay fine of Rs.100/-, in default, rigorous

imprisonment for one week, for the offence punishable under Section 452 of the Indian Penal Code. According to the State Government, punishment imposed by the learned Additional City Sessions Judge, Ahmedabad, on the respondent is inadequate and, therefore, the present appeal is filed.

5. Mr. K.P. Rawal, learned Additional Public Prosecutor, has submitted that, having regard to the injury sustained by the victim, maximum punishment prescribed under Section 307 of the Indian Penal Code should have been imposed on the respondent. It was submitted that no special reasons have been assigned by the learned Judge while directing the respondent to undergo rigorous imprisonment for three years for the offence punishable under Section 307 of the Indian Penal Code and, therefore, the present appeal filed by the State Government for enhancement of sentence should be entertained. It was claimed that the sentence imposed by the learned Judge is too lenient and, therefore, appropriate punishment should be imposed by this Court.

6. In our opinion, there is no substance in any of the contentions raised on behalf of the appellant and the appeal cannot be entertained. As is evident from the further order passed by the learned Additional City Sessions Judge, Court No.11, Ahmedabad, before imposing sentence, the learned Additional Public Prosecutor as well as the accused were heard on the question of sentence. While directing the respondent to undergo rigorous imprisonment for three years for the offence punishable under Section 307 of the Indian Penal Code, the learned Judge has taken into consideration the nature of injury sustained by the injured. However, the learned Judge has directed the respondent to undergo rigorous imprisonment for three years, because the learned Judge found that the respondent is a poor person and has two small children and wife to maintain. Young age of the respondent is also taken into consideration by the learned Judge before imposing sentence. The learned Judge has observed that the offence was committed by the respondent "out of heat and feeling". In our view, it cannot be said that the sentence imposed on the respondent is, in any manner, inadequate so as to call for interference by this Court in the present appeal. Before imposing sentence, the learned Judge has taken into consideration all the relevant factors, which the court must take into account before imposing sentence. Having regard to the circumstance in which the offence came to be committed and the fact that the respondent is a poor person who has to maintain two small children and

the wife, it cannot be said that punishment imposed on the respondent is too lenient or inadequate in any manner. As the relevant factors are taken into consideration by the learned Judge before imposing the sentence, discretion, exercised by the learned Judge judicially, of imposing the sentence of rigorous imprisonment of three years on the respondent for the offence punishable under Section 307 of the Indian Penal Code, does not call for interference by this Court in the present Appeal. Under the circumstances, the appeal cannot be entertained and is liable to be dismissed summarily.

For the foregoing reasons, we do not find any substance in the appeal. The appeal, therefore, fails and is summarily dismissed.

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(swamy)